

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action electronically mailed February 7, 2007. At the time of the Office Action, Claims 1-22 were pending in the Application. Claims 1-22 stand rejected. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 101 Rejection

The Examiner rejects Claims 18-22 under 35 U.S.C. §101: suggesting the claimed invention is directed to non-statutory subject matter. Applicant defers this issue at this time, but welcomes an Examiner amendment/suggestion to cure this purported §101 issue.

Section 102 Rejection

The Examiner rejects Claims 1-22 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,249,801 issued to Zisapel et al. (hereinafter “*Zisapel*”). This rejection is respectfully traversed for the following reasons.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.¹ In addition, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claims” and “[t]he elements must be arranged as required by the claim.”² In regard to inherency of a reference, “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.”³ Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

³ MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

⁴ MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

Using this well-settled jurisprudence, it is clear that the pending subject matter is clearly patentable over *Zisapel*. For example, *Zisapel* fails to offer “a loadbalancer operable to...build an object that correlates an internet protocol (IP) address associated with the end user to the selected gateway such that the object may be used to direct subsequently received packets associated with the end user to the selected gateway, the subsequently received packets being directed by the loadbalancer based on end user IP address information included in the subsequently received packets.”

The Examiner should appreciate some of the teachings of this identified passage. First, it is the *loadbalancer that builds an object*, which is not discussed by *Zisapel* in any form. Second, this very object is the actual item that is used to control the direction of subsequently received packets. The object is essentially leveraged to offer guidance on how forthcoming packets are to be routed. Third, a loadbalancing function is inherent in a ‘loadbalancer’ that directs subsequently received packets such that, not only is the object being used to make a routing decision, a loadbalancing protocol is also being implemented. At the passages cited by the Examiner in the recent OA, there is simply no disclosure that discusses any of this material. Moreover, Applicant has reviewed *Zisapel* and can confirm that there is nothing in *Zisapel* that offers an ability to ***build an object*** that correlates an internet protocol (IP) address associated with the end user to the selected gateway ***such that the object may be used to direct subsequently received packets*** associated with the end user to the selected gateway, as is recited in amended Independent Claim 1.

For at least these reasons, Independent Claim 1 and its dependents should be allowed over *Zisapel* and all other references of record. In addition, Independent Claims 8, 13, and 18 (and their respective dependents) should be allowed for similar or analogous reasons. Notice to this effect is respectfully requested.

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CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214-953-6675.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant


Thomas J. Frame
Reg. No. 47,232

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Customer No. **05073**